1971

State of Utah v. Thomas David Romano : Brief of Appellant Accompanying Request To Withdraw

Utah Supreme Court

Vernon B. Romney; Attorney for Respondent

In The Supreme Court of the State of Utah

STATE OF UTAH,
Plaintiff and Respondent,

vs.

THOMAS DAVID ROMANO,
Defendant and Appellant.

Case

Brief of Appellant Accom
Request To Withdra

Appeal from a jury verdict of guilt
Judicial District Court, in and for Sal
the Honorable Bryant H. Croft, pres

D. GILBE

Salt Lake Lega
Association

343 South Sixth
Salt Lake City,

Attorney for

VERNON B. ROMNEY
Attorney General, State of Utah
236 State Capitol
Salt Lake City, Utah

Attorney for Respondent

F I L

JAN

Clerk, Supreme

LORRAINE PRESS 1397 SOUTH MAIN STREET SALT LAKE CITY, UTAH PHONE

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In The Supreme Court of the State of Utah

THE STATE OF UTAH,
Plaintiff-Respondent,
-vs-
THOMAS DAVID ROMANO,
Defendant-Appellant.

Case No. 12594

Brief of Appellant Accompanying Request To Withdraw

STATEMENT OF THE NATURE OF THE CASE

The appellant, Thomas David Romano, appeals from a conviction of Automobile Homicide in the Third Judicial District Court, Salt Lake County, State of Utah.

DISPOSITION IN LOWER COURT

The appellant, Thomas David Romano, was found guilty by a jury of the crime of Automobile Homicide on January 26, 1971, and was on February 11, 1971, sentenced to the Utah State Prison for the indeterminate term as provided by law of one to ten years.

RELIEF SOUGHT ON APPEAL

Appellant prays that the judgment of the lower court be reversed and the case remanded for a new trial. Counsel on appeal request permission to withdraw from the appeal and submits the brief in compliance with *Anders v. California,* 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

STATEMENT OF FACTS

In the early morning hours of August 6, 1970, an automobile accident occurred at the intersection of 21st South and 9th East, Salt Lake City, Utah. (R. 118, 119) Tony James Welch later that morning died of injuries sustained in the accident. (R. 221, 249) Paul Dupin was called as a witness and testified that he was with the deceased on August 5, 1970, that they attended a party that evening together (R. 103, 104), that in the early morning hours of the 5th he was in the back seat of the deceased's vehicle as they approached the intersection of 21st South and 9th East, that the light was green as they entered the intersection and the next thing he remembered was sitting in the street suffering from certain physical injuries (R. 105-106). Officer Ronald Nelson testified he was in the area of 21st South and 9th East when he heard what sounded like an explosion; he proceeded to 21st South and 9th East where he observed the accident. He observed several injured persons in a Mustang automobile and the appellant pinned in a Buick automobile (R. 119-123). Officer David

Lord testified as an expert that in his opinion the Buick driven by appellant was traveling at a speed of between 45 and 70 miles per hour at the point of impact (R. 157, 158). Officer Lord described the point of impact and the course of travel after the accident (R. 147). Lynn H. Davis testified that he conducted a chemical analysis of the appellant's blood and determined that the sample tested was 0.13 per cent by weight ethyl alcohol (R. 201). Dr. Stuart C. Harvey, a doctor of pharmacology, testified concerning the effects of alcohol on the human body. (R. 227-248). Dr. James T. Weston testified that at the time of the autopsy a blood alcohol analysis of the deceased's blood showed .054 per cent ethynol (R. 225).

The appellant testified that he was proceeding along 9th East approaching 21st South, that as he approached the intersection the light turned green and punched the gas pedal and the next thing he rememberd was waking up in the hospital (R. 252).

ARGUMENT

POINT I

APPELLANT IS ENTITLED TO A NEW TRIAL BECAUSE THE EVIDENCE WAS CONTRARY TO THE VERDICT.

This court has on numerous occasions stated the rules concerning the granting of a new trial on the

basis that the evidence did not support the verdict. In *State v. Cooper*, 114 Utah 531, 201 P.2d 764, 770 (1949) this court stated:

> The question of granting or denying a motion for a new trial is a matter largely within the discretion of the trial court . . . . This court cannot substitute its discretion for that of the trial court . . . . We do not ordinarily interfere with the rulings of the trial court in either granting or denying a new trial, and unless abuse of, or failure to exercise discretion, on the part of the trial judge is quite clearly shown, the ruling of the trial court will be sustained.

While in appellant's case there was no motion for a new trial, the above language would seem to indicate when this court will grant a new trial, even in the absence of such a motion.

This court further has stated, in *State v. Miles*, 122 Utah 306, 249 P.2d 211 (1952):

> If the state's evidence is so 'inherently improbable' as to be unworthy of belief, so that upon objective analysis it appears that reasonable minds could not believe beyond a reasonable doubt that the defendant was guilty, the jury's verdict cannot stand. Conversely, if the state's evidence is such that reasonable minds

> could believe beyond a reasonable doubt that the defendant was guilty, the verdict must be sustained. 249 P.2d at 212.

See also *State v. Horne,* 12 Utah 2d 162, 364 P.2d 109 (1961), for the same rule. This court later said that before setting aside a jury verdict, "it must appear that the evidence is so inconclusive or unsatisfactory that reasonable minds acting fairly upon it *must* have entertained reasonable doubt that the defendant committed the crime." (emphasis in original) *State v. Danks,* 10 Utah 2d 162, 350 P.2d 146 (1960), citing *State v. Sullivan,* 6 Utah 2d 110, 307 P.2d (1957). A jury verdict is reversed only when taking the evidence in the light most favorable to the verdict, the "findings are unreasonable." *State v. Berchtold,* 11 Utah 2d 208, 357 P.2d 183 (1960). If the verdict is "supported by sufficient competent evidence" a new trial is to be denied. *State v. Rivenburgh,* 11 Utah 2d 95, 355 P.2d 689 (1960). See also *State v. Schad,* 24 Utah 2d 255, 470 P.2d 246 (1970) (must be "reasonable basis" for verdict.)

It is apparent from these various statements of the law that this court does have the power to grant a new trial in appropriate cases.

> We are not unmindful of the settled rule that it is the province of the jury to weigh the testimony and determine the facts. Nevertheless, we cannot escape the responsibility of

> judgment upon whether under the evidence, a jury could, in reason, conclude that the defendant's guilt was proved beyond a reasonable doubt. *State v. Williams,* 111 Utah 379, 180 P.2d 551, 555 (1947).

Clearly, then, each case must turn upon its own facts as to whether or not a new trial is warranted because the verdict was not supported by the evidence.

CONCLUSION

D. Gilbert Athay, attorney for appellant, respectfully requests permission to withdraw, believing the appeal is without meritorious grounds. The foregoing brief discusses the law applicable to the only points that could arguablybe presented on appeal. This court can, pursuant to *Anders v. California, supra,* dismiss the appeal as frivolous or proceed to a decision of the merits.

Respectfully submitted,

D. GILBERT ATHAY
Attorney for Appellant